

Michigan Advocacy Project's Comments to the Senate Judiciary Committee on SB 64 & 65

Chairman Jones and members of the committee, thank you for considering these comments of the Michigan Advocacy Project ("MAP") on SBs 64 and 65. MAP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and issues affecting the elderly. As outlined below, MAP regards SB 64 and 65 as unfair and detrimental to the interests of tenants, particularly low income tenants.

SB 64

This bill, which would create a new cause of action for recovery of possession of premises (eviction), does not provide a real and workable solution to a perceived problem, the extent of which has not been shown. It would allow a landlord to evict a tenant if a member of the tenant's household or person under the tenant's control caused or threatened injury to another person on any property owned or managed by the landlord (not just the rental premises).

The criminal justice system, not district court civil summary eviction proceedings, are the best vehicle for quickly responding to violent acts or threats of them by a tenant against other tenants or others on the rental premises. Creating a shortened notice period for these situations and yet another other grounds for recovery of premises under MCL 600.5714 is not an effective response to these situations.

Overbroad and vague

The proposed provision is overbroad and vague in many ways, including the following:

- there is no requirement that the tenant intend to cause injury, and so, a tenant household would be subject to eviction if a member, without meaning to, inadvertently or accidentally caused any injury to anyone on the landlord another tenant or landlord or agent (for example a tenant who harmlessly rounded a corner and accidentally bumped another would be vulnerable to eviction);
- there is neither definition of the words that "injury" or "threat", or any words that qualify the nature of an injury or threat, such as "genuine", "direct", "actual", or "serious"; (so that, for example, an entire household would be subject to eviction if a child member childish and not seriously threatened harm to another)
- the term "person under the tenant's control" is not defined;
- the geographic scope of coverage is unlimited because it extends to any property owned or operated by the landlord.

While MAP appreciates the improvements that the substitute bill makes by offering some protection to domestic violence survivors, the revised provision would still be open to abuse and exploitation, and would produce unfair, if not sometimes absurd results. Other grounds for obtaining a summary proceedings possession judgment require some objective documentary or physical evidence; as well, such evidence can be used to rebut the complaint. For example, a tenant with receipts can rebut a claim of nonpayment of rent. In alleged property damages case, the alleged damage can be visibly verified. But, with the proposed new grounds, the proffered evidence will often be more subjective and thus more prone to manipulation. A landlord could obtain a judgment by merely alleging, without corroboration, that the tenant caused some

physical injury or merely threatened such injury to the landlord without any objective evidence of such a threat or injury. These cases will quickly devolve to "she said-he said" scenarios, in which a tenant will usually be in the weaker and more vulnerable position. The absence of any safeguards (e.g. a police report requirement) against this scenario unfolding, and the vagueness of the bill make it untenable.

Suppression of expression

The proposed amendment would deter tenants from raising legitimate concerns and complaints to their landlords and other tenants, out of a legitimate fear that such comments could be misconstrued or distorted and lead to their eviction. This "chilling effect" would be most problematic in the case of governmentally subsidized rental housing, particularly public housing, because it could infringe on a tenant's First Amendment rights, including the right to petition.

SB 65

This bill would remove a necessary check (the requirement of a police report) on potential abuse of the means of seeking recovery of rental premises provided for by MCL 600.5714(1)(b). As it exists, this provision lacks necessary safeguards and protections against misuse and unjust evictions, and so, eliminating, rather than adding such safeguards would make it only more severe and suspect.

The police report requirement serves several purposes, including demonstration that the landlord has taken some external step to address the alleged illegal drug activity, and that there has presumably been some on-site review, however minimal, of that alleged activity by a 3rd party.

Eviction of innocent occupants – both bills

Under each bill, where a member of the household (or possibly "person under the tenant's control") did behave irresponsibly, other innocent members of the household, who were not involved in or consent to that behavior would nonetheless be subject to the punitive sanction of eviction and the likely homelessness to follow. The lack of any protection for innocent household members is a further shortcoming of these bills.